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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/806,216	03/23/2004	Yoshinobu Kaneko	1419.1060C	1667
21171	7590	05/25/2005	EXAMINER	
STAAS & HALSEY LLP. SUITE 700 1201 NEW YORK AVENUE, N.W. WASHINGTON, DC 20005			WILLIAMS, JAMILA O	
		ART UNIT		PAPER NUMBER
		3722		
DATE MAILED: 05/25/2005				

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/806,216	KANEKO ET AL.	
	Examiner	Art Unit	
	Jamila O Williams	3722	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on amendment filed 2/4/05.
- 2a) This action is FINAL. 2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) Claim(s) 1-41 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) Claim(s) _____ is/are allowed.
- 6) Claim(s) 1-41 is/are rejected.
- 7) Claim(s) _____ is/are objected to.
- 8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on _____ is/are: a) accepted or b) objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) All b) Some * c) None of:
 1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. _____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>3/31/05</u> . | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| | 6) <input type="checkbox"/> Other: _____ |

Double Patenting

1. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

2. Claims 1-41 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-7,10-16 of copending Application No. 10/056,090. Although the conflicting claims are not identical, they are not patentably distinct from each other because the claims of '090 are of similar subject matter but narrower in scope, thereby meeting the broader limitations of this application.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and

the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 1-4, 13,14,33,36,39 are rejected under 35 U.S.C. 103(a) as being unpatentable over 7-299255 to Kabushiki. Kabushiki discloses right and left turning members for turning right and left steering wheels (fig 1), a connecting member (6) for connecting the right and left turning members with each other and for forming a turning pair with each turning member; one of a coil and a magnetic body (7,8) is provided on the connecting member and the other of the coil and magnetic body is fixed to a fixing portion (fig 1), the coil and magnetic body come close to and go away from each other and the connecting member takes at least two steering positions by controlling a current to be carried to the coil with a coil current carrying unit (page 20 2nd paragraph and page 21 1st paragraph of the specification),wherein the permanent magnet is provided so as to direct two poles of the permanent magnet to right and left directions and the coil is provided so as to face an edge portion to one of the two poles (fig 3-4). Kabushiki further discloses a round coil having an air coil (as seen for the figures). Regarding the disc shaped magnet (recited in claim 39), these type of magnets are well known in the art and therefore the use would have been obvious to one having ordinary skill in the art. Although Kabushiki discloses having a neutral position there is no mention of the connecting member comprising a spring. '566 to Ishimoto teaches having a spring that aids in keeping the connecting member in neutral position. It would have been obvious to one having ordinary skill in the art at the

time the invention was made to use the spring of Ishimoto with the connecting member of Kabushiki for the purpose of better maintaining neutral position when current is not applied

5. Claim 15,16,21,35,38,40,41 are rejected under 35 U.S.C. 103(a) as being unpatentable over 7-299255 to Kabushiki in view of '566 to Ishimoto and further in view of '490 to Lesney (on ids). Kabushiki and Ishimoto disclose all of the elements of the claims (as applied above) except for the suspension device. Lesney teaches a suspension for moving the right and left turning members (figs 5-6) in upper and lower directions in a predetermined range; the suspension comprising a biasing member (18) which is supported in a middle of a width direction of the running toy so that right and left edge portions of the biasing member are elastically deformable in upper and lower directions and which extends on the right and left turning members; wherein the turning members are pressed with the right and left edge portions by a biasing force which is caused by elastically deforming the biasing member (page 3 lines 15-93), as recited in claims 7 and 10. It would have been obvious to one having ordinary skill in the art to use the suspension of Lesney with the running toy of Ishimoto for the purpose of providing better suspension qualities for the toy.

Response to Arguments

Applicant's arguments with respect to the claims have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jamila O Williams whose telephone number is 703-305-3312. The examiner can normally be reached on 6:30am-3:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Derris H Banks can be reached on 703-308-1745. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

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